IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4118 OF 2006

Bank of India] .. Petitioners

Versus

1. Debts Recovery Appellate Tribunal & Anr.] .. Respondents

Mr. Satish Shetye with Ms. Swati Deshpande i/b M.S. Bodhanwalla & Co. for the petitioners.

Mr. Dhananjay Patil for the respondent No.2.

CORAM: S.B. MHASE, &
R.S. MOHITE, JJ.

DATED: 02ND APRIL, 2007

P.C. :

. Heard.

2. The order dated 14th March, 2006, passed by the Chairperson of the Debts Recovery Appellate Tribunal passed in Appeal No.195 of 2004 is challenged by filing this Writ Petition. By the said order, the Appellate Tribunal directed the respondent to deposit a sum of Rs.10,00,000/- within a period of four weeks from the date of the order. The said order was passed by the Appellate Tribunal as against the order of the Debts Recovery Tribunal wherein the decree of about

Rs.5,23,00,000/- has been passed in favour of the petitioner-Bank. There are also other creditors of the respondent and their claim is near about Rs.7.5 crores. As per Section 21 of the Debts Recovery Tribunals Act when the Appeal is preferred, the appellant is expected to deposit 75% of the decretal amount with the Appellate Tribunal and, therefore, the learned counsel for the petitioner submitted that the impugned order passed by the Debts Recovery Appellate Tribunal is contrary to the provisions of Section 21 and hence it should be struck down. He further submitted that atleast 10% of the amount should have been directed to be deposited.

3. What we find is that there is no merit in the Petition. No doubt, Section 21 of the said Act makes it obligatory that the appellant against whom the decree has been passed by the Debts Recovery Tribunal, shall deposit 75% amount with the Appellate Tribunal. However, the proviso to Section 21 specifically states that for the reasons recorded by the Appellate Tribunal, the Appellate Tribunal may waive and/or reduce the said amount to be deposited. In the present matter, the Appellate Tribunal has considered that all properties of the respondent have already been attached by the petitioner and, therefore, it is not possible for the respondent to raise money by selling the properties.

Under these circumstances, the respondent offered that he is willing to deposit an amount of Rs.5,00,000/- along with the Appeal. However, the Appellate Tribunal directed him to deposit Rs.10,00,000/-. It is very interesting to note that all the properties of the respondent are under attachment and he is not possessed of any liquid money to make any deposit. His Appeal cannot be allowed to be non-suited because he is not possessed of money. Under these circumstances, for such a contingency only, the proviso has given ample power to the Appellate Tribunal to waive that amount also. In the present matter, though there is no order of total waiver, but the Appellate Tribunal having considered the facts and circumstances of the case, has directed to deposit an amount of Rs.10,00,000/-. That is a judicial discretion which has been exercised by the Appellate Tribunal which requires no interference at the hands of this Court.

4. We refrain to entertain the Petition. Writ Petition is hereby dismissed.

Sd/-
[R.S. MOHITE, J.]

Sd/-
[S.B. MHASE, J.]